

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

CARMEN NIEVES,	)	CASE NO. 1:12 CV 1814
	)	
Plaintiff,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	<u>MEMORANDUM OF OPINION</u>
UNITED STATES POSTAL SERVICE,	)	<u>AND ORDER</u>
	)	
Defendant.	)	

On July 16, 2012, this case was removed from the Cleveland Municipal Court, Small Claims Division, pursuant to 28 U.S.C. § 1442(a), by the Defendant United States Postal Service. The action removed was filed by Plaintiff *pro se* Carmen Nieves, who seeks damages in the amount of \$200 for an insured package he alleges was not delivered by Defendant.

It is a jurisdictional prerequisite to a federal lawsuit that a claimant who seeks recovery from the United States must first file an administrative claim under the Federal Tort Claims Act (“FTCA”). *Rogers v. United States*, 675 F.2d 123, 124 (6<sup>th</sup> Cir. 1982). As there is no allegation Plaintiff presented an administrative claim to the appropriate federal agency, the Complaint is fatally deficient. *Altman v. Connally*, 456 F.2d 1114, 1116 (2d Cir. 1972).

Further, even had Plaintiff exhausted his administrative remedies, “[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter,” 28 U.S.C. § 2680, is barred by the doctrine of sovereign immunity. This is because such claims are specifically excluded under the FTCA. *Davric Maine Corp. v. United States Postal Service*, 238 F.3d 58, 62 (1<sup>st</sup> Cir.

2001).

Accordingly, this action is dismissed. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

DATED: September 20, 2012

s/ Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE